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# INTERNATIONAL ACTION ON THE LYTTON REPORT

by

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with the aid of the Research Staff of the Foreign Policy Association

## THE FINDINGS OF THE LYTTON COMMISSION

SOMETIMES between November 14 and 21 the League Council will meet to take action on the report of the Lytton Commission of Enquiry. It is believed that this report will have more influence than any other single event in recent years in showing the necessity of an understanding between China and Japan. The report is also regarded as of great importance for the future of peace machinery. Even those who are pessimistic concerning the present situation have raised the question whether this report, if made two years ago, would not have prevented the subsequent development of what the Lytton Commission calls "war in disguise." In the light of the experience gained in the Sino-Japanese dispute, some students express the hope that the League of Nations, acting under Article XIX of the Covenant, will establish a body similar to the Lytton Commission to study the difficulties between other great powers, such as France and Germany, before these difficulties reach the breaking point.

Believing that the question of Manchuria vitally depends on the relations between Japan and China as a whole, the Lytton Commission observes that the internal condition of China—which for many years has been disturbed by revolution and banditry and which today is threatened by communism<sup>1</sup>—is a fundamental cause of unrest in the Orient. These conditions "have adversely affected all the nations with which China has been brought into contact and, until remedied, will continue a menace to world peace and a contributory cause of world economic depression.<sup>2</sup> Although nationalism is a normal aspect of a period of political transition,

"the influence of the Kuomintang has introduced into the nationalism of China an additional and abnormal tinge of bitterness against all foreign influences . . . Having started upon the road of international cooperation for the purpose of solving her difficulties, as was done at Washington [in 1921], China might have made more sub-

1. A detailed description of these conditions, as revealed by this report and other documentation, will be reserved for treatment in a later number of *Foreign Policy Reports*.

2. League of Nations, Appeal by the Chinese Government, *Report of the Commission of Enquiry*, C.663.M.320.1932.VII, p. 13. (Hereinafter cited as the *Lytton Report*.)

stantial progress in the ten years that have since elapsed had she continued to follow that road. She has only been hampered by the virulence of the anti-foreign propaganda which has been pursued," notably in the case of anti-foreign teaching in the schools and the economic boycott.<sup>3</sup>

Nevertheless the Commission states that the National government has made considerable progress. Moreover, it challenges the view expressed by the Japanese government in its statement of February 23, 1932<sup>4</sup> that present conditions in China must "profoundly" modify the application to China of the Covenant. The Commission declares<sup>5</sup>

"An argument which constantly reappears in the polemics of the present controversy is that China is 'not an organized State' or 'is in a condition of complete chaos and incredible anarchy,' and that her present-day conditions should disqualify her from membership of the League of Nations and deprive her of the protective clauses of the Covenant. In this connection, it may be useful to remember that an altogether different attitude was taken at the time of the Washington Conference by all the participating Powers. Yet, even at that time, China had two completely separate governments, one at Peking and one at Canton, and was disturbed by large bandit forces . . . Although, at present, the Central Government's authority is still weak in a number of provinces, the central authority is not, at least openly, repudiated, and there is reason to hope that, if the Central Government as such can be maintained, provincial administration, military forces and finance will acquire an increasingly national character. Those, among others, were doubtless the reasons which induced the Assembly of the League of Nations last September to elect China to the Council."

Any attempt to divide China among foreign powers would merely accentuate existing tension. The unification and reconstruction of China is the essential solution.

"The considerations which actuated the representatives of the Powers at the Washington Conference are still valid. It is quite as much in the interests of the Powers now as it was in 1922

3. *Ibid.*, p. 18. The Commission devotes a chapter to the boycott, which it finds has always been started after some definite event, such as the Wanpaoshan incident in June 1931, which China has interpreted as directed against itself. The Commission finds that the boycotts are controlled by the Kuomintang but does not feel justified in determining the actual relationship of the Kuomintang to the government, or of passing upon the question whether the boycott is in conformity with treaty obligations. The Chinese government contends that the boycott is a legitimate measure of defense against military aggression by a stronger country. (*Ibid.*, Ch. VII, p. 112-121.)

4. League of Nations, *Official Journal*, March, 1932, p. 38.

5. *Lytton Report*, cited, p. 17.

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to assist the reconstruction of China and to maintain her sovereignty and her territorial and administrative integrity as indispensable to the maintenance of peace. Any disintegration of China might lead, perhaps rapidly, to serious international rivalries, which would become all the more bitter if they should happen to coincide with rivalries between divergent social systems. . . . Since the present political instability in China is an obstacle to friendship with Japan and an anxiety to the rest of the world (as the maintenance of peace in the Far East is a matter of international concern), and since the conditions enumerated above cannot be fulfilled without a strong Central Government in China, the final requisite for a satisfactory solution is temporary international cooperation in the internal reconstruction of China as suggested by the late Dr. Sun Yat-sen.”<sup>6</sup>

“All the other claims of her newly awakened nationalism—legitimate and urgent though they may be—should be subordinated to this one dominating need for the effective internal reconstruction of the State.”<sup>7</sup>

The Commission reiterates that fulfillment of this end necessitates on the part of China “the cultivation of friendly relations with all countries,” and especially Japan.<sup>8</sup>

In the second place, the Commission recognizes that Japan is especially affected by conditions in China and, in particular, Manchuria. “So far as Japan is China’s nearest neighbor and largest customer,” she has suffered more than any other power from the lawless conditions in China and from the boycott.<sup>9</sup> The Asiatic market takes 42.5 per cent of Japanese exports. “Japan’s investments abroad have been almost entirely confined to China and Manchuria.”<sup>10</sup> “In its entirety, Japanese dependence upon China is greater than China’s dependence upon Japan. Hence Japan is the more vulnerable and has more to lose in case of disturbed relations.”<sup>11</sup> The fact that Sino-Japanese trade has steadily increased since the war of 1894 shows that “there is an underlying economic tie that no political antagonism has been able to sever.”<sup>12</sup>

According to the Commission, Manchuria is of great importance to both Japan and China. Patriotic sentiment accentuated by Japan’s sacrifices in its war with Russia in 1904-1905, the paramount need of military defense, and the exceptional treaty rights acquired by Japan “all combine to create the claim to a ‘special position’ in Manchuria.” “There is probably nowhere in the world an exact parallel to this situation, no example of a country enjoying in the territory of a neighbouring State such extensive economic and administrative privileges.”<sup>13</sup> China, however, regards Manchuria as part of its territory, a first line of defense, a population out-

let, and a granary. The Commission gives evidence to show that historically, culturally and legally Manchuria has been part of China for centuries. The report declares:<sup>14</sup>

“The millions of Chinese farmers now settled permanently on the land have made Manchuria in many respects a simple extension of China south of the Wall. The Three Eastern Provinces have become almost as Chinese in race, culture and national sentiment as the neighbouring Provinces of Hopei and Shantung, from which most of the immigrants came.” There is no analogy between Manchuria and Outer Mongolia [the latter territory being under the influence of Soviet Russia]. “. . . Outer Mongolia is bound to China by no strong economic or social ties, and is sparsely inhabited by a population which is mainly non-Chinese.”

The Commission cannot accept the contention of Japan that it has “special interests” in Manchuria, in the sense in which the Lansing-Ishii agreement of 1917 used that term.

“The Japanese Government, since the Russo-Japanese War, has at various times sought to obtain from Russia, France, the United Kingdom and the United States of America recognition of their country’s ‘special position,’ ‘special influence and interest,’ or ‘paramount interest’ in Manchuria. These efforts have only met with partial success, and, where recognition of such claims has been accorded, in more or less definite terms, the international agreements or understandings containing them have largely disappeared with the passage of time, either by formal abrogation or otherwise.” The signatories of the Nine-Power treaty of 1922, “challenged to a large extent the claims of any signatory State to a ‘special position’ or to ‘special rights and interests’ in any part of China, including Manchuria.” The Japanese claim to such a position in Manchuria “conflicts with the sovereign rights of China. . . .”<sup>15</sup>

The Commission intimates, moreover, that the importance of Manchuria to Japan may be exaggerated. Manchuria does not seem to be suitable for Japanese emigration on a large scale.<sup>16</sup> It may become an important source of food supply in the future, “but in that case a large amount of capital would have to be spent in the development of a sufficient irrigation system.”<sup>17</sup> Even greater amounts of capital would be necessary to create Japanese heavy industries and develop the coal, oil, and iron resources of Manchuria. There is no reason to believe that Japan and Manchuria could succeed in forming a self-sufficient economic bloc. “Japan depends for the bulk of her commerce far less on Manchuria than she does on the United States, China proper and British India.”<sup>18</sup> Japan looks to further industrialization as a means of solving its agrarian crisis, but

“the only large and relatively sure markets that Japan can find are in Asia and particularly in China. Japan requires, not only the Manchurian, but the whole Chinese market, and the rise in the standard of living which will certainly follow the

6. *Ibid.*, p. 129, 131.

7. *Ibid.*, p. 131.

8. *Ibid.*

9. *Ibid.*, p. 23.

10. *Ibid.*, p. 114.

11. *Ibid.*

12. *Ibid.*

13. *Ibid.*, p. 38.

14. *Ibid.*, p. 128.

15. *Ibid.*, p. 39-40.

16. *Ibid.*, Ch. VIII, p. 121-126.

17. *Ibid.*, p. 122.

18. *Ibid.*, p. 123.

consolidation and modernisation of China should stimulate trade and raise the purchasing power of the Chinese market."<sup>19</sup>

In other sections, the Commission gives an historical analytical statement of the difficult issues confronting Japan and China in Manchuria which finally led to the outbreak of September 18, 1931. These issues arose out of disagreement as to the treaty rights of Japan in Manchuria, and included such questions as the Japanese railway guards, the problem of the Koreans, the right of Japanese to reside in the interior, the Wan-pao-shan affair, and the Captain Nakamura case.<sup>20</sup> The Commission declares<sup>21</sup> that by the end of August, 1931,

"Sino-Japanese relations over Manchuria were severely strained in consequence of the many controversies and incidents described. . . . The claim that there were 300 cases outstanding between the two countries and that peaceful methods for settling each of them had been progressively exhausted by one of the parties cannot be substantiated. These so-called 'cases' were rather situations arising out of broader issues, which were rooted in fundamentally irreconcilable policies. Each side accuses the other of having violated, unilaterally interpreted, or ignored the stipulations of the Sino-Japanese agreements. Each side had legitimate grievances against the other." Although some efforts were being made to dispose of these issues "by the normal procedure of diplomatic negotiation . . . and these means had not yet been exhausted . . . the long delays put a strain on the patience of the Japanese," particularly in army circles.

#### JAPAN'S "SELF-DEFENSE" PLEA REJECTED

In discussing the methods employed by Japan since September to settle these disputes with China, the Commission furnishes evidence from which the conclusion may be drawn that Japan has violated its international obligations. Japan justified its resort to force on the night of September 18, 1931 at Mukden on the grounds of "self-defense." After describing in detail the events of this night the Commission states:<sup>22</sup>

"Tense feeling undoubtedly existed between the Japanese and Chinese military forces. The Japanese, as was explained to the Commission in evidence, had a carefully prepared plan to meet the case of possible hostilities between themselves and the Chinese. On the night of September 18th-19th, this plan was put into operation with swiftness and precision. The Chinese, in accordance with the instructions referred to . . . had no plan of attacking the Japanese troops, or of endangering the lives or property of Japanese nationals at this particular time or place. They made no concerted or authorized attack on the Japanese forces

19. *Ibid.*, p. 128.

20. The Commission's survey is omitted here in view of the treatment of these issues in previous numbers of *Foreign Policy Reports*. The Commission does state, however, (*ibid.*, p. 46) after an examination of the documents, that the Chinese government admitted that there was an obligation "not to construct railways patently and unreasonably prejudicial to the interests of the South Manchuria Railway," though it has always denied that Japan had any valid claim to monopolize railway construction in southern Manchuria. Moreover, there had never been a definition of what constituted a parallel railway.

21. *Ibid.*, p. 68.

22. *Ibid.*, p. 71.

and were surprised by the Japanese attack and subsequent operations. An explosion undoubtedly occurred on or near the railroad between 10 and 10:30 p.m. on September 18th, but the damage, if any, to the railroad did not in fact prevent the punctual arrival of the south-bound train from Changchun, and was not in itself sufficient to justify military action. The military operations of the Japanese troops during this night, which have been described above, cannot be regarded as measures of legitimate self-defense. In saying this, the Commission does not exclude the hypothesis that the officers on the spot may have thought they were acting in self-defense."

#### MANCHOUKUO AS A PUPPET STATE

Second, Japan has contended that the creation of the "state" of Manchoukuo was due to a revolution on the part of the inhabitants, and not to Japanese troops, and hence that it had not violated Article X of the Covenant or the Nine-Power treaty.<sup>23</sup> The Lytton report rejects this contention. After describing in detail the steps taken to establish the new government,<sup>24</sup> the report declares:<sup>25</sup>

"It is clear that the Independence Movement, which had never been heard of in Manchuria before September 1931, was only made possible by the presence of the Japanese troops. . . . The evidence received from all sources has satisfied the Commission that, while there were a number of factors which contributed to the creation of 'Manchukuo' the two which, in combination, were most effective, and without which, in our judgment, the new State could not have been formed, were the presence of Japanese troops and the activities of Japanese officials, both civil and military.

"For this reason the present régime cannot be considered to have been called into existence by a genuine and spontaneous independence movement."

In their interviews with the Commission the representatives of this "Government" claimed that with the help of the Japanese they would be able to establish peace and order within a reasonable time, and would thereafter be able to maintain it permanently. They expressed the belief that they would be able to secure the support of the people in time by assuring them an honest and efficient administration, security from bandit raids, lower taxation as the result of reduced military expenditures, currency reform, improved communications and popular political representation.

"But, after making every allowance for the short time which has hitherto been at the disposal of the 'Manchukuo Government' for carrying out its policy, and after paying due regard to the steps already taken, there is no indication that this 'Government' will in fact be able to carry out many of its reforms. . . . As regards the 'Government' and the public services, although the titular heads of the Departments are Chinese residents in Manchuria, the main political and administrative power rests in the hands of Japanese officials and advisers. The political and

23. *Ibid.*

24. The account generally resembles that given in T. A. Bisson, "Japan and Manchoukuo," *Foreign Policy Reports*, Vol. VIII, No. 8, June 22, 1932.

25. *Lytton Report*, cited. p. 97.

administrative organisation of the 'Government' is such as to give to these officials and advisers opportunities, not merely of giving technical advice, but also of actually controlling and directing the administration. They are doubtless not under the orders of the Tokyo Government, and their policy has not always coincided with the official policy either of the Japanese Government or of the Headquarters of the Kwantung Army. But in the case of all-important problems, these officials and advisers, some of whom were able to act more or less independently in the first days of the new organisation, have been constrained more and more to follow the direction of Japanese official authority. . . .<sup>26</sup>

"After careful study of the evidence presented to us in public and private interviews, in letters and written statements, we have come to the conclusion that there is no general Chinese support for the 'Manchukuo Government,' which is regarded by the local Chinese as an instrument of the Japanese."<sup>27</sup>

In view of the fact that the population of Manchuria and of China proper are hostile to the Manchoukuo régime, an attempt to maintain this "state" may prove injurious to the economic and strategic interests of Japan.

"While acknowledging the interest of Japan in preventing Manchuria from serving as a base of operations directed against her own territory, and even her wish to be able to take all appropriate military measures if in certain circumstances the frontiers of Manchuria should be crossed by the forces of a foreign Power, it may still be questioned whether the military occupation of Manchuria for an indefinite period, involving, as it must, a heavy financial burden, is really the most effective way of insuring against this external danger; and whether, in the event of aggression having to be resisted in this way, the Japanese troops in Manchuria would not be seriously embarrassed if they were surrounded by a restive or rebellious population backed by a hostile China. It is surely in the interest of Japan to consider also other possible solutions of the problem of security, which would be more in keeping with the principles on which rests the present peace organisation of the world, and analogous to arrangements concluded by other great Powers in various parts of the world. She might even find it possible, with the sympathy and good-will of the rest of the world, and at no cost to herself, to obtain better security than she will obtain by the costly method she is at present adopting."<sup>28</sup>

"No foreign Power could develop Manchuria or reap any benefit from an attempt to control it without the good-will and wholehearted cooperation of the Chinese masses which form the bulk of the population, tilling its soil, and supplying the labour for practically every enterprise in the country. Neither will China ever be free from anxiety and danger unless these Northern Provinces cease to afford a battleground for the conflicting ambitions of neighbouring Powers."<sup>29</sup>

While the demand of Japan for a stable government in Manchuria is not unreasonable, such a condition

"can only be securely and effectively guaranteed by an administration which is in conformity with the wishes of the population and which takes full account of their feelings and aspirations. And equally it is only in an atmosphere of external confidence and internal peace, very different from

that now existing in the Far East, that the capital which is necessary for the rapid economic development of Manchuria will be forthcoming."<sup>30</sup>

"Past experience has shown that those who control Manchuria have exercised a considerable influence on the affairs of the rest of China—at least of North China—and possess unquestionable strategic and economic advantages. To cut off these provinces from the rest of China, either legally or actually, would be to create for the future a serious irredentist problem which would endanger peace by keeping alive the hostility of China and rendering probable the continued boycott of Japanese goods."<sup>31</sup>

An economic rapprochement is essential to the welfare of both Japan and China. The latter country

"would find that a closer economic and technical collaboration with Japan would assist her in her primary task of national reconstruction. China could assist this *rapprochement* by restraining the more intolerant tendencies of her nationalism and by giving effective guarantees that, as soon as cordial relations were re-established, the practice of organised boycotts would not be revived. Japan, on her side, could facilitate this *rapprochement* by renouncing any attempt to solve the Manchurian problem by isolating it from the problem of her relations with China as a whole, in such a way as to make impossible the friendship and collaboration of China."<sup>32</sup>

In short, economic rapprochement depends upon political understanding between the two countries.

#### THE COMMISSION'S RECOMMENDATIONS

The final part of the Lytton report offers recommendations for a solution of the Manchurian difficulty designed both to safeguard legitimate Japanese interests and to protect the interests of China. The Commission does not favor the restoration of the *status quo ante*, since this would be "to leave out of account the realities of the situation." It equally opposes the maintenance and recognition of Manchoukuo for the foregoing reasons. What the Commission does recommend is the establishment of an autonomous government for Manchuria, subject to China's sovereignty, to be established by "direct negotiation" between Japan and China.<sup>33</sup>

The Commission suggests that the League Council invite the governments of China and Japan to discuss a solution of their dispute on the lines indicated in the Lytton report. Should this invitation be accepted, the next step would be the summoning of an Advisory Conference, consisting of representatives of the Chinese and Japanese governments and of two delegations representing the local population—to be selected in a manner to be prescribed respectively by the Chinese and Japanese governments. With the agreement of the parties, the assistance of neutral observers might be secured. If the conference were unable to agree on any particular point, it would submit the point of

26. *Ibid.*, p. 106.

27. *Ibid.*, p. 111.

28. *Ibid.*, p. 129.

29. *Ibid.*, p. 135.

30. *Ibid.*, p. 128.

31. *Ibid.*

32. *Ibid.*, p. 128-129.

33. *Ibid.*, p. 127.

difference to the Council, which would attempt to secure an agreement. The results of the discussions of the Advisory Conference should be embodied in four separate instruments:

1. A Declaration by the Government of China constituting a special administration for the Three Eastern Provinces, in the terms recommended by the Advisory Conference;
2. A Sino-Japanese Treaty dealing with Japanese interests in Manchuria;
3. A Sino-Japanese Treaty of Conciliation and Arbitration, Non-Aggression and Mutual Assistance;
4. A Sino-Japanese Commercial Treaty.<sup>34</sup>

#### AN AUTONOMOUS MANCHURIA

The Commission recommends that the Advisory Conference negotiate the establishment of an autonomous government of Manchuria, which, while remaining under the sovereignty of China, would embody many of the features of the "state" of Manchoukuo. This régime would rest upon a declaration issued by the Chinese government and transmitted by it to the League of Nations and the signatories of the Nine-Power treaty, which would have "the binding character of an international engagement."<sup>35</sup> It is suggested that in this declaration the Central Government of China reserve the control of general foreign relations, as well as that of the customs, post office, and the salt gabelle in Manchuria, the proceeds to be divided by agreement between the Central and provincial governments. It should also retain the power of appointment, at least in the first instance, of the Chief Executive of Manchuria.

All other powers should be vested in the autonomous government of Manchuria. Some system might be devised to secure an expression of local opinion regarding the administration and to safeguard the interests of the White Russians and other minorities. The autonomous government should be aided by a number of foreign advisers, "of whom a substantial proportion should be Japanese."<sup>36</sup> The chief executive of Manchuria should appoint two foreigners of different nationalities, from a panel submitted by the League Council, to exercise supervision over the constabulary and over fiscal administration. The chief executive should also appoint an adviser to the Central Bank of Manchuria from a panel submitted by the board of directors of the Bank for International Settlements. Provision is made for at least two judicial advisers, one of whom should be Japanese, and possibly for a railway adviser. The Commission emphasizes that the employment of foreign advisers who, during the period of the organization of the new

régime, must exercise exceptionally wide powers, merely represents a form of international cooperation.

"They must be selected in a manner acceptable to the Chinese Government and one which is consistent with the sovereignty of China. When appointed, they must regard themselves as the servants of the Government employing them. . . . The goal to be kept in view throughout the period of transition is the creation of a civil service composed of Chinese, who will ultimately make the employment of foreigners unnecessary."<sup>37</sup>

Perhaps the most interesting feature of this proposed autonomous régime is the suggestion for the organization of a special gendarmerie with the collaboration of foreign instructors, "which would be the only armed force within the Three Eastern Provinces. . . . Its organisation, when completed, should be followed by the retirement from this territory of all other armed forces, including any special bodies of police or railway guards, whether Chinese or Japanese."<sup>38</sup>

Having established an autonomous régime in Manchuria, the two parties should define the interests of Japan in this area. The aims of the Sino-Japanese treaty concluded for this purpose should be "the free participation of Japan in the economic development of Manchuria, which would not carry with it a right to control the country either economically or politically; the continuance in the Province of Jehol of such rights as Japan now enjoys there; an extension to the whole of Manchuria of the right to settle and lease land, coupled with some modification of the principle of extraterritoriality; an agreement regarding the operation of the railways."<sup>39</sup>

The Commission realizes that China would not consent to the extension of the right of settlement if Japan continued to maintain the right of extraterritoriality. The Commission also recognizes that the application of extraterritoriality to the Koreans is bound to offer many occasions for friction. In the opinion of the Commission, "the most satisfactory solution of the problem is to make the administration of these Provinces so efficient that extraterritorial status will no longer be desired."<sup>40</sup> With this object the report recommends the appointment of at least two foreign advisers to the Manchurian courts. The opinion of these advisers might be made public in all cases involving foreigners which the courts adjudicated. Moreover, either the Chinese or Japanese government could bring complaints in the name of its nationals before an arbitral tribunal. Any extension of the rights of settlement to the Japanese should apply to the nationals of other powers under the most-favored-nation clause.

<sup>34.</sup> *Ibid.*, p. 133. It is recommended that the broad outlines of a settlement be agreed to by the parties before the conference begins.

<sup>35.</sup> *Ibid.*, p. 134.

<sup>36.</sup> *Ibid.*

<sup>37.</sup> *Ibid.*, p. 135.

<sup>38.</sup> *Ibid.*, p. 134.

<sup>39.</sup> *Ibid.*, p. 135.

<sup>40.</sup> *Ibid.*, p. 136.

To terminate railway rivalry, the Commission suggests, as one possibility, a working agreement between the Chinese and Japanese railway administrations, under a joint Sino-Japanese Railway Commission, with at least one foreign adviser. A second, more thorough, remedy would be the amalgamation of Chinese and Japanese railway interests—a plan which could be evolved along lines similar to those already followed by Japan in Manchuria during the last few months. Such an arrangement would make the South Manchuria Railway a purely commercial enterprise. A special municipal administration in the railway area should, however, be established in order to safeguard the vested interests of the South Manchuria Railway. By means of such a Sino-Japanese treaty many conflicts and misunderstandings arising over the respective rights of China and Japan would be settled. In the Commission's view, "China might then find no difficulty in recognizing all the definite grants made to Japan by such treaties and agreements as those of 1915, unless abrogated or modified by the new treaty."<sup>42</sup> This apparently implies that Japan should continue to maintain its leasehold at Dairen. Although the economic interests of Japan in Manchuria should thus be given a treaty basis, the Commission insists that the Open Door should be maintained.

The third treaty would provide pacific procedure to assist in the solution of disputes between China and Japan. For this purpose a board of conciliation and an arbitral tribunal should be established. The latter "would deal with any disputes between the Chinese and Japanese Governments regarding the interpretation of the Declaration or of the new treaties, and with such other categories of

disputes as might be specified in the treaty . . ."<sup>42-43</sup> Finally, the treaty should contain provisions in regard to non-aggression and mutual assistance. For this purpose the parties should agree that

"Manchuria should gradually become a demilitarized area, [and that] after the organisation of the gendarmerie had been effected, any violation of the demilitarized territory by either of the parties or by a third party would constitute an act of aggression entitling the other party, or both parties in the case of a third-party attack, to take whatever measures might be deemed advisable to defend the militarized territory, without prejudice to the right of the Council of the League to take action under the Covenant."<sup>44</sup>

The Commission suggests that if the Soviet government wishes to participate in these non-aggression provisions it should be free to do so.<sup>45</sup>

Under the Commission's proposal for a non-aggression agreement, Japan would be free to resist Soviet aggression in Manchuria; if the Soviets violated the territory, Japan could use force in legitimate defense and could also invoke the aid of the League. At the same time, such an agreement would assure China that Japan would not abuse the doctrine of legitimate defense, nor employ strategic arguments to justify the establishment of a veiled protectorate over Manchuria.

The fourth treaty would be a commercial agreement designed to encourage Japanese trade with China as a whole. "This treaty should also contain an undertaking by the Chinese Government to take all measures within its power to forbid and repress organised boycott movements against Japanese trade, without prejudice to the individual rights of Chinese consumers."<sup>46-49</sup>

## LEAGUE ACTION ON THE SINO-JAPANESE DISPUTE

To understand the action which the League may take on the Lytton report it is necessary to review the history of the Sino-Japanese dispute. Between September 22, 1931, when the League was seized with this dispute, and January 29, 1932, the Council attempted to restore peace by acting under Article XI of the Covenant.<sup>50</sup> This article is purely conciliatory in nature, and no action could be taken under it without the consent of Japan. By virtue of this article, and, in fact, at Japan's request, the Council created the Lytton Commission in its resolution of December 10, 1931. On January 14, 1932

41. *Ibid.*, p. 137.

42-43. *Ibid.*, p. 137-138.

44. *Ibid.*, p. 137-138.

45. Although stating that it had not been able to obtain direct information as to the views of the Soviet government, the Commission declared that "it is clear that any solution of the problem of Manchuria which ignored the important interests of the U.S.S.R. would risk a future breach of the peace and would not be permanent." (*Ibid.*, p. 129-130.)

46-49. *Ibid.*, p. 138.

the Council approved the membership of this Commission, which had been selected by the President of the Council with the approval of China and Japan.<sup>51</sup> The Commission consisted of the Earl of Lytton (Great Britain), former Governor of Bengal and at one time Viceroy and Acting Governor-General of India, who served as chairman; Count Luigi Aldrovandi-Marescotti (Italy), former Ambassador to Berlin; General Henri Claudel

50. Cf. John C. de Wilde, "The League and the Sino-Japanese Dispute," *Foreign Policy Reports*, Vol. VIII, No. 10, July 20, 1932 and Raymond Leslie Buell, "The Weakness of Peace Machinery," *ibid.*, Vol. VIII, No. 14, September 14, 1932.

51. Not the least noteworthy feature of this Commission was the extent to which it drew upon the knowledge of experts such as Professor G. H. Blakeslee of Clark University; Dr. C. Walter Young of the Institute of Current World Affairs; Dr. de Kat Angelino, Dutch colonial expert; Colonel T. A. Hiam of the Canadian National Railways; M. Dennery of the University of France, and others who travelled with the Commission. The Secretary-General of the Commission was Robert Haas of the League Secretariat. The assessor named by the Japanese government was Mr. I. Yoshida, Ambassador of Japan to Turkey; the Chinese government named as its assessor Dr. Wellington Koo, formerly Prime Minister and Minister for Foreign Affairs.

(France), Inspector General of Colonial Troops since 1925; Major-General Frank McCoy (United States), who supervised the Nicaraguan elections of 1928 on behalf of the American government; and Dr. Heinrich Schnee (Germany), former Governor-General of German East Africa. The composition of the Lytton Commission was thus restricted to nationals of the great powers, the majority of whom had had colonial experience.<sup>52</sup>

On January 29, however, five days before the Commission had left Europe, the Chinese government, dissatisfied with the results of the loose procedure under Article XI of the Covenant, formally invoked Articles X and XV. By the latter article the Council was required to make a formal report and recommendations concerning the Sino-Japanese dispute, without taking Japan's vote into consideration. The Council, dominated by the great powers, hesitated to carry out the provisions of this article, and on February 12 China requested that the dispute be referred to a special Assembly, in which every member of the League is represented.<sup>53</sup> The Council, which by the terms of the Covenant was obliged to grant such a request, referred the dispute to the Assembly on February 19. The Assembly, which could be conveniently convened owing to the fact that the Disarmament Conference was in session, passed a resolution on March 11 establishing a Committee of nineteen members, under the chairmanship of M. Hymans of Belgium. The remaining members of the Committee were representatives of the twelve neutral members of the Council, and of six other governments—Switzerland, Czechoslovakia, Colombia, Portugal, Hungary and Sweden—elected by the Assembly. To the Committee of Nineteen was delegated the task of following the situation in Shanghai and Manchuria for the purpose of presenting recommendations to the Assembly, which could be convened at any time. This Committee assisted in the conclusion of the armistice agreement of May 5 between China and Japan, which led to the Japanese evacuation of Shanghai. It was understood, however, that in the case of Manchuria the Committee

52. These circumstances had aroused the fear that the Commission would be more sympathetic to Japan than to China. The fact that, notwithstanding its conservative nature, the Commission should have made a report which does not support the present policy of Japan, is considered as of unusual significance. Cf. "Un Verdict Ecrasant," *Journal de Genève*, October 4, 1932.

53. Paragraph 10 of Article XV states: "In any case referred to the Assembly, all the provisions of this Article and of Article XII relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute."

would not initiate action until it had received the Lytton report.

According to the Covenant, the report and recommendations of the Council (or the Assembly) must be made within six months after the submission of the dispute—a provision designed to prevent injustice which might be caused by indefinite delay. Since the Sino-Japanese dispute was submitted to the Assembly on February 19, the Assembly's report should have been made by August 19. It soon became evident, however, that the Lytton report would not be ready by that date. Consequently, on July 1, 1932 the Special Assembly, with the consent of both parties, authorized an extension of the time limit "to the extent that may be strictly necessary and on the understanding that the said extension shall not constitute a precedent."<sup>54</sup> The Assembly would fix the duration of the extension after receiving the Lytton report.

#### THE JAPAN-MANCHOUKUO ALLIANCE

As the Lytton Commission approached the end of its investigations, reports became numerous that Japan would disregard any recommendations that challenged its newly established position in Manchuria. In an address of August 8, 1932, which was interpreted as an effort to strengthen the Lytton Commission, Secretary of State Stimson again declared that the United States would recognize no situation created in violation of the Anti-War Pact. Apparently as a counter-move, the Japanese government recognized the "state" of Manchoukuo on September 15,<sup>55</sup> by concluding a protocol of alliance and a secret military agreement with the new "state." The text of the alliance follows:<sup>56</sup>

"Whereas Japan has recognised the fact that Manchoukuo, in accordance with the free will of its inhabitants, has organised and established itself as an independent state; and

"Whereas Manchoukuo has declared its intention of abiding by all international engagements entered into by China in so far as they are applicable to Manchoukuo;

"Now the governments of Japan and Manchoukuo have, for the purpose of establishing a perpetual relationship of good neighbourhood between Japan and Manchoukuo, each respecting the territorial rights of the other, and also in order to secure the peace of the Far East, agreed as follows:

"1. Manchoukuo shall confirm and respect, in so far as no agreement to the contrary shall be made between Japan and Manchoukuo in the future, all rights and interests possessed by Japan or her subjects within the territory of Manchou-

54. League of Nations, Records of the Special Session of the Assembly (July 1932), Vol. II, *Official Journal*, special supplement No. 102, p. 12.

55. On August 8 the Japanese government appointed General Muto as Ambassador Extraordinary on special mission in Manchuria and Governor-General of Kwantung, as well as Commander-in-Chief of the Kwantung army, for the purpose of co-ordinating "the various Japanese institutions in Manchuria" under a single authority. (Cf. C.594.M.292.1932.VII.)

56. Cf. League of Nations, *Appeal from the Chinese Government, Communication from the Japanese Delegation*, C.655.M.-818.1932.VII.

kuo by virtue of Sino-Japanese treaties, agreements or other arrangements or Sino-Japanese contracts, private as well as public;

"2. Japan and Manchoukuo, recognising that any threat to the peace and order of either of the High Contracting Parties constitutes at the same time a threat to the safety and existence of the other, agree to cooperate in the maintenance of this national security; it will be understood that such Japanese forces as may be necessary for this purpose will be stationed in Manchoukuo."<sup>57</sup>

The United States received the recognition of Manchoukuo with official silence. The Chinese government, however, in a declaration to the League of September 20, 1932 vigorously protested against this recognition and accused Japan of having violated the fundamental principles of international law, the Covenant, the Anti-War Pact, and the Nine-Power treaty.<sup>58</sup> Moreover, at the Council session of September 24, 1932 the president of the Council, Mr. de Valera of the Irish Free State, expressed regret, which he felt sure was shared by the other members of the Council, that

"before even publication of the [Lytton] report, Japan has, not only by recognizing, but also by signing a treaty with what is known as the Manchoukuo Government, taken steps which cannot but be regarded as calculated to prejudice settlement of the dispute. For almost a year the Council, in its collective capacity, and the individual governments which compose it, have scrupulously refrained from uttering any word of judgment on the merits of this grave dispute, on the ground that a Commission had been set up to investigate the dispute in all its bearings, and that until the Commission had reported and its report been considered by the organs of the League, the whole question was still to be regarded as *sub judice*."

At the request of the Japanese Government, the Council nevertheless agreed to postpone a discussion of the Lytton report until November 14, subject to a delay not exceeding a week thereafter,<sup>59</sup> in order to give the Japanese government time to prepare observations upon the report.

The Chinese government expressed the opinion that, since the League Council had

57. Under Article XVIII of the Covenant Japan is obliged to register "every treaty or international engagement" to which it is a party. Moreover, no such treaty or international engagement shall be binding until so registered. Under Article XX, however, League members agree not to enter into any engagements "contrary to the Covenant." If the "state" of Manchoukuo has been established in violation of the Covenant, does it follow that the League should refuse to register this treaty, thereby denying its validity? Apparently to prevent the issue from arising, Japan did not attempt to register the treaty, calling it a "protocol." (Streit dispatch, *New York Times*, September 18, 1932.) A "protocol," however, is no less an "international engagement" than a treaty and, consequently remains subject to registration under Article XVIII.

58. League of Nations, Appeal from the Chinese Government, document C.679.M.325.1932.VII. The Chinese government addressed a note to the United States, published September 17, 1932, which declared that "a grave situation has arisen which involves the application of the stipulations of the Nine-Power Treaty and, therefore, in accordance with Article VII thereof, communicates its full and frank views to the governments of those powers which are parties to that treaty, with the request that such measures be taken as will properly and effectively deal with the state of affairs brought about by Japan's acts of aggression in China. . . ." (*New York Times*, September 18, 1932.)

59. *Minutes of the Sixty-eighth Session of the Council*, (P.V.2 (1)). The Japanese government appointed Yosuke Matsukata, former vice-president of the South Manchuria Railway to present its observations to Geneva.

referred this dispute to the Assembly under Article XV, the latter body alone was competent to determine when the Lytton report should be discussed. The President of the Council declared that, according to the unanimous opinion of the Secretariat lawyers, "the Council has the right to receive and examine this report, and to send it to the Assembly with or without its observations."<sup>60</sup>

#### POSSIBLE COURSES OF ACTION BY THE LEAGUE OF NATIONS

According to this ruling the Lytton report, which was published on October 2, will come before the Council between November 14 and 21 when two or three days will probably be taken to consider the Japanese observations on the report.<sup>61</sup> The report, with observations, will then be transmitted to the President of the Assembly, who will immediately place these documents in the hands of the Committee of Nineteen.<sup>62</sup>

Under paragraph 3 of Article XV the Assembly may first attempt to effect an agreement between the two parties by conciliation and, should this procedure fail, the Assembly must prepare, under paragraph 4, a report and recommendations. The Committee of Nineteen is to recommend whether the Assembly should attempt to effect a conciliation before bringing in the formal report. It is expected that the Special Assembly will meet early in December to act on the recommendations of the Committee.<sup>63</sup> Although certain quarters favor the postponement of formal action, it will be difficult for the Assembly to delay carrying out its duties under paragraph 4 of Article XV, since the six-months' limit within which a report must be presented has already elapsed. When the Assembly in July consented to extend this period, it was severely criticized,<sup>64</sup> and it is improbable that China and other League members will consent to a long postponement.

Assuming, therefore, that the Special As-

60. On September 26, 1932 the Chinese representative, Dr. Yen, addressed a note to the President of the Committee of Nineteen calling his attention to the decision of the Council requesting the Committee to decide on the duration of the extension of the six-months' period, and asking it to take the necessary steps to prevent Japan from taking advantage of any delay to aggravate the situation. (League document, C.678-M.324.1932.VII.) The Committee approved the Council's action. (*Journal des Nations*, October 2-3, 1932.)

61. Cf. the Secretary-General's remarks, *Minutes of the Sixty-eighth Session of the Council*, cited.

62. Japan may possibly attempt to block transmittal of the report to the Assembly, asserting that such transmittal may be authorized only by unanimous consent. In reply it may be contended that Japan agreed to the principle of the Commission last December, and that the transmittal of the report is a matter of procedure, requiring only a majority vote. Moreover, Japan did not object when the Secretary-General circulated a preliminary report from the Lytton Commission to the Council and members of the League on May 2, 1932. (Cf. League document C.407.M.225.1932.VII.) It is reported that Japan has withdrawn its objections to the consideration of this dispute by the Assembly under Article XV. Cf. Buell, "Weakness of Peace Machinery," cited, p. 167; *New York Times* (Byas dispatch), October 15, 1932.

63. M. Hymans, Committee of Nineteen; *Journal des Nations*, October 2-3, 1932.

64. "Un retard déplorable," *Journal de Genève*, June 28, 1932.

sembly will take definite action on the Lytton report, the following course is possible:

1. The Assembly may formally recommend to Japan and China the acceptance of the Lytton recommendations.
2. Should Japan refuse to accept such recommendations,<sup>65</sup> the Assembly could then examine whether Japan had violated its international obligations.
3. Should the Assembly conclude that Japan had violated its obligations, it could next decide what steps League members should take to cause Japan to comply with its obligations.

It is not improbable that a considerable period of time may elapse before the Assembly has exhausted this procedure.

I. Under the Covenant, the Assembly may apparently give China or Japan an unlimited period of time in which to decide whether or not to accept a recommendation made under Article XV. If Japan, either in its observations to the Council on November 14, or in a subsequent declaration to the Assembly, should immediately and unconditionally reject the Lytton recommendations, the Assembly would then be confronted with the question of the next step. If Japan, however, wishes to avoid taking issue with the League, it will postpone its reply to the Assembly or express willingness to negotiate concerning the acceptance of the Lytton recommendations.<sup>66-67</sup>

#### HAS JAPAN VIOLATED ITS INTERNATIONAL OBLIGATIONS?

II. Should Japan reject the Assembly recommendations made under Article XV, the next step would be for the League to determine whether Japan has violated its international obligations. It is clear that Japan is under no obligation to accept a recommendation made under Article XV; its only obligation is not to go to war against China should the latter accept such a recommendation.<sup>68</sup> Neither Japan nor China, however, has declared war, and today the Chinese government is offering no armed resistance to the Manchoukuo régime.

Nevertheless, Japan has undertaken a certain number of other obligations, and it is believed that the Assembly may express an opinion whether or not these obligations have been violated.<sup>69</sup>

65. This assumes that China will accept these recommendations.

66-67. One dispatch stated that the Japanese government was beginning to take the view that should events demonstrate that Manchoukuo could not maintain a satisfactory existence, it might favorably consider the Lytton report. Meanwhile, if the League would withhold judgment, Japan might admit League observers to Manchuria. Byas dispatch, *New York Times*, October 20, 1932.

68. Provided of course such recommendation is adopted by all the states represented on the Council, excluding the two parties, together with a majority of the other members of the League.

69. One method would be for the Assembly to request the Permanent Court for an advisory opinion as to whether the Covenant has been violated. It has not yet been decided whether the Council or Assembly can make such a request without the consent of the parties to the dispute. Moreover, in the Eastern Carelia case, the Court ruled that it could not

Although Japan has not resorted to "war," it has employed force in the settlement of a dispute without first "submitting" it to the Council in accordance with Articles XII and XV. Japan contends that, while "seeking"<sup>70</sup> a pacific settlement with China, it has been obliged to use force in "self-defense," a right which has not been renounced under the Covenant. Nevertheless, the League may pass upon the question whether the circumstances in Manchuria justified Japan in invoking "self-defense." In doing so the Assembly will undoubtedly be guided by the finding of the Lytton Commission that Japan's resort to force at Mukden on the night of September 18 could not be justified on grounds of self-defense.<sup>71</sup>

In addition to passing on the question whether Japan has improperly invoked the plea of self-defense, the Special Assembly may examine the question whether Japan has observed the commitments accepted under the Council resolutions of September 30 and December 10, 1931. In these resolutions Japan promised to avoid any further aggravation of the situation, subject to a reservation made to the December 10 resolution reserving the right to take action "to provide directly" for the protection of Japanese lives and property. Subsequently the Japanese army proceeded to establish complete control over the whole of southern Manchuria, while the Japanese government officially recognized the "state" of Manchoukuo. Both the Lytton Commission and the Committee of Nineteen<sup>72</sup> appear to be of the opinion that these acts go beyond the Japanese reservation to the December 10 resolution and hence constitute a violation of the Japanese commitments.

The Assembly also will be faced with the question whether Japan has violated its obligations under Article X of the Covenant, in which Japan has agreed "to respect and preserve as against external aggression the territorial integrity and existing political independence" of China. This obligation is similar to that found in Article I of the Nine-Power treaty of February 6, 1922, in which Japan and eight other powers agreed:<sup>73</sup>

give an advisory opinion involving the Soviet government without its consent. In that case, however, Russia was not a member of the League and the Court declared that League members "are under the obligation resulting from the provisions" of the Covenant "dealing with the pacific settlement of international disputes." (Permanent Court of International Justice, *Collection of Advisory Opinions*, No. 5, p. 27.) Finally, it seems that the Assembly, acting by majority vote under Article V, paragraph 2 of the Covenant, could establish an *ad hoc* committee of jurists to give an opinion on this question. It is customary for the League Council or Assembly to refer a question involving the interpretation of the Covenant to such a committee, rather than to the Permanent Court.

70. For the comments of the Lytton Commission on this point cf. p. 210.

71. *Ibid.*

72. *Lytton Report*, cited, p. 77. For the opinion of the members of the Committee of Nineteen cf. *Journal des Nations*, October 2-3, 1932.

73. Five additional powers—Norway, Sweden, Denmark, Bolivia and Mexico—have adhered to this treaty.

(1) to respect the sovereignty, the independence, and the territorial and administrative integrity of China;

(2) to provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable government;

(3) to use their influence for the purpose of effectually establishing and maintaining the principle of equal opportunity for the commerce and industry of all nations throughout the territory of China;

(4) to refrain from taking advantage of conditions in China in order to seek special rights or privileges which would abridge the rights of subjects or citizens of friendly States, and from countenancing action inimical to the security of such States.

Japan contends that it has not violated Article X of the Covenant or Article I of the Nine-Power treaty, since the "state" of Manchoukuo is not the result of Japan's aggression, but of "separatist movements within China herself," which are prohibited neither by the Nine-Power treaty nor by Article X of the Covenant.<sup>74</sup>

In forming an opinion on the question whether the "state" of Manchoukuo is the result of Japanese aggression or of an internal revolution, the League members will again be guided by the Lytton report, which conclusively indicated that Manchoukuo could not have been established, nor could it be maintained today, except for Japanese military and political assistance.

In applying Article X of the Covenant to this controversy, the Assembly will be confronted with the technical difficulty that it is for the Council to advise upon the means by which the obligations of the article are to be carried out. Does it follow that the Assembly can take no action under Article X? According to one opinion this conclusion does not necessarily follow.<sup>75</sup> Each League member has an individual obligation under Article X<sup>76</sup> and it may fulfil this obligation apart from the advice of the Council. The creation of the Committee of Nineteen may provide a means of coordinating the action of the Assembly and the Council, under this article, since this committee contains the twelve neutral Council members and seven representatives of the Assembly.<sup>77</sup>

74. Cf. speech of Foreign Minister Uchida to the Diet, August 25, 1932. (*New York Times*, August 25, 1932). For the reply of the Lytton Commission to the Japanese statement that the Nine-Power treaty is not applicable to China, and that Manchuria is not a part of China, cf. p. 209. According to the Lytton report (p. 121), Manchuria is "legally an integral part of China."

75. The first Assembly resolved that neither the Council nor the Assembly had jurisdiction to render a decision in any matter which the Covenant had expressly committed to the other body, but either body could examine any matter within the competence of the League. League of Nations, *Records of the First Assembly*, plenary meetings, p. 284; 303 *et seq.*; 318.

76. Walther Schücking and Hans Wehberg, *Die Satzung des Völkerbundes*, (Berlin, Verlag von Franz Vahlen, 1924), second edition, p. 464.

77. Paul Guggenheim, *Der Völkerbund in seiner politischen und rechtlichen Wirklichkeit* (Leipzig and Berlin, Teubner Verlag, 1932), p. 120. For the question whether the Council can act under Article X without the consent of Japan, cf. Buell, "The Weakness of Peace Machinery," cited, p. 167.

Finally, the Assembly may ask whether Japan has violated its obligations under the Anti-War Pact. Japan answers this question in the negative, on the ground that the right of self-defense is not renounced in that agreement. Unlike the Covenant, the Anti-War Pact does not authorize any international machinery to apply and interpret its provisions. The United States, in fact, formally declared in a note of June 23, 1928 that each state "alone is competent to decide whether circumstances require recourse to war in self-defense."<sup>78</sup> It is the Japanese view that this understanding, accepted by the signatories before ratification of the Pact, effectually prevents any other party from passing legal judgment on Japan's acts under the Anti-War Pact.<sup>79</sup> Uncertainty regarding this question may make it more difficult for the Assembly to apply the Anti-War Pact than either the Covenant or the Nine-Power treaty.<sup>80</sup>

#### THE QUESTION OF SANCTIONS

III. Should Japan be found to have violated its obligations, the League members, acting on the advice of the Council or Assembly, would have to decide what action, if any, should be taken to secure Japan's compliance with its obligations. From the legal point of view there is an obligation to apply the sanctions defined in Article XVI only against a state which illegally resorts to war. Since Japan, however, will presumably not go to "war" against China, this obligation does not apply. Nevertheless, the League members have a general obligation to support the Covenant, apart from the specific provisions of Article XVI. Moreover, the Council shall advise upon the means of fulfilling the obligations of Article X, and it may expel from the League any member "which has violated any covenant of the League," which may possibly be interpreted to include any international obligation.<sup>81</sup>

Among the measures which the Assembly (or Council) may recommend to secure the enforcement of treaty obligations are the following:

1. The application of the non-recognition doctrine advanced by the United States in its note of January 7, 1932 and by the Assembly resolution of March 11. Hitherto no government has been under obligation not to recognize Manchoukuo, since there has been no agreement as to whether this "state" has come into existence in violation of the Anti-War Pact and the

78. *Notes Exchanged between the United States and Other Powers on the subject of a Multilateral Treaty for the Renunciation of War* (Washington, Government Printing Office, 1928), p. 33.

79. Cf. Inazo Nitobe, *Japan and the Peace Pact* (New York, privately printed, 1932).

80. The question raised by the Anti-War Pact will be dealt with in more detail in a subsequent number of *Foreign Policy Reports* on the Peace Policy of the United States.

81. Article XVI, paragraph 4. The vote of the interested party is not counted when the Council acts under this paragraph.

Covenant. Should the League, however, in the light of the Lytton report, find that Japan has violated these agreements in connection with the establishment of Manchoukuo, it would follow that the League members could not "recognize" this "state."

2. The withdrawal of diplomatic representatives from Tokyo, until the Japanese government is willing to accept the Lytton report.

3. An international agreement prohibiting any foreign loans, or the export of arms, to Japan or Manchoukuo.

4. A similar agreement prohibiting the purchase of certain Japanese goods, or the export of certain commodities to Japan.

5. The expulsion or suspension of Japan from the League.

Such are the steps which it is possible for the League to take: a formal recommendation that the parties accept the Lytton report; a determination whether Japan has violated its obligations; and the application of sanctions.

Whether or not the League proceeds beyond the first of these steps will depend largely on considerations of policy.

Fear has been expressed that if the League should pronounce Japan guilty of violating its international obligations, the Tokyo government might withdraw from the League. From the legal point of view, however, there are a number of restrictions on the right of withdrawal. According to Article I of the Covenant, a member may withdraw only after two years' notice, and only on condition that it has fulfilled its international obligations—a condition which does not exist in the case of Japan.

Moreover, should Japan leave the League it would no longer exercise the veto which it now has over League action, and it would probably have to relinquish its Pacific mandates<sup>82</sup>—privileges which many Japanese do not wish to surrender. Even as a non-member, Japan would still be confronted with the possibility that the League might invoke against it Article XVII of the Covenant.

In view of the delicate international situation, some observers believe that the League is not strong enough to join issue with Japan on the Lytton report. It is argued that Japan's growing economic and political difficulties<sup>83</sup> will soon cause Japanese leaders to alter their opinion of the Lytton report provided they are not forced by the League into a position where acceptance of the report would appear as a national humiliation. According to this view, the League should mark time in the hope that the pressure of events will force a change in Japanese policy.

82. Cf. C. Tadao Yamakawa, "Should Japan Leave the League?" *Contemporary Japan*, Vol. I, No. 2, September 1932; also a series of articles, "Japan Should Quit the League," in the *Osaka Mainichi* and the *Tokyo Nichi Nichi*, May 4-17, 1932.

83. Cf. T. A. Bisson, "The Rise of Fascism in Japan," *Foreign Policy Reports*, Vol. VIII, No. 17, October 26, 1932.

Others, however, insist that if the League, confronted by the unequivocal findings of the Lytton Commission, fails to adopt a clear-cut course of action, its position as an important institution will be forfeited and all hope of outlawing war and reducing armaments will disappear. If, as a result of League inaction, Japan is given the opportunity to assert that the failure of Manchoukuo, should it occur, is in no way due to pressure from Geneva but to local causes, then the League will have become so weakened that other powers may be encouraged to embark on military adventures.

#### POSITION OF THE UNITED STATES

Owing to its traditional interest in the Orient and to the leading part which it played in the negotiation of the Anti-War Pact, the United States has been unusually active in the past year in attempting to adjust the Sino-Japanese dispute. The American government strongly supported the establishment of the Lytton Commission and assented to the appointment of General McCoy, commanding general of the fourth corps area of the United States Army, as a member of this Commission.<sup>84</sup> Moreover, the United States was the first to formulate the non-recognition doctrine. Despite these various steps, American policy regarding the Lytton report remains undefined.

Although the peace policy of the United States will be discussed in detail in a subsequent report, the possibilities which confront this country in connection with the Lytton findings may be stated here as follows:

1. The United States might send a representative to participate in the discussions of the Committee of Nineteen, following the precedent established when Hugh R. Wilson, American Minister to Switzerland, took part in the work of the third committee of the 1931 Assembly concerning the arms truce.<sup>85</sup>

2. If the Assembly formally recommends the acceptance of the Lytton recommendations by Japan and China under paragraph 4, Article XV, the United States, in a note issued simultaneously with the Assembly resolution, could make identical recommendations.

3. If Japan rejects these recommendations, and the League declares that Japan has violated its obligations under the Covenant and the Nine-Power treaty, the United States could simultaneously express the view that Japan has violated its obligations under the Nine-Power treaty.

4. The United States and the League members could then jointly declare that they would not recognize the "state" of Manchoukuo, and establish an international embargo on loans to Japan and Manchoukuo.

84. The members of the Commission served as individuals and not as representatives of their respective governments. Officially General McCoy was "absent with commission to investigate the situation in the Far East."

85. League of Nations, Records of the Twelfth Ordinary Session of the Assembly, Minutes of the Third Committee, *Official Journal*, special supplement No. 96, p. 32-33.